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U. S. DEPT. OF AGRICULTURE

FOOD DISTRIBUTION ADMINISTRATION
UNITED STATES DEPARTMENT OF AGRICULTURE

[Food Distribution Order 8]

PART 1401—DAIRY PRODUCTS

RESTRICTIONS ON PRODUCTION OF FROZEN
DAIRY FOODS AND MIX

Pursuant to the authority vested in me by Executive Order No. 9280, dated December 5, 1942, and to assure an adequate supply and efficient distribution of dairy products to meet war and essential civilian needs, *It is hereby ordered as follows:*

§ 1401.31 *Frozen dairy foods and mix, limitations with respect to production thereof—(a) Definitions.* When used in this regulation, unless otherwise distinctly expressed or manifestly incompatible with the intent thereof:

(1) The term "processor" means any person engaged in the manufacture of frozen dairy foods or mix.

(2) The term "frozen dairy foods" means any frozen or partially frozen food products (including ice cream, French ice cream, ice milks, milk ices, frozen custards, sherbets, and other similar preparations) containing milk solids and sugar together with stabilizers, extracts, fruits, nuts, coloring, or flavoring materials.

(3) The term "mix" means any liquid or dried unfrozen preparation (including ice cream mix, ice cream powders, milk ice mix, ice milk mix, milk shake mix, and other similar preparations), containing milk solids and sugar, that is used directly in the freezing of a frozen dairy food.

(4) The term "ice cream" means any frozen dairy food containing 8 per centum or more (by weight) of milk fat included in 14 per centum or more (by weight) of total milk solids.

(5) The term "person" means any individual, partnership, corporation, association, or other business entity.

(6) The term "Director" means the Director of Food Distribution, United States Department of Agriculture, or any employee of the United States Department of Agriculture designated by such Director.

(7) The term "base period" means the period from December 1, 1941, to November 30, 1942, both dates inclusive.

(8) The term "allocation period" means any period, specified by the Director, to which quotas, reports, and other regulations herein provided are applicable.

(b) *Restrictions on production of frozen dairy foods and mix.* (1) No processor may, during any allocation period specified by the Director pursuant hereto, utilize in the production of frozen dairy foods or mix more than 65 per centum of the total milk solids used by the respective processor in the production of such products, respectively, during the corresponding portion of the base period. The milk solids used in frozen dairy foods or mix manufactured for, delivered to, and for the account of an agency specified in or pursuant to paragraph (c) hereof shall be excluded from the amount of milk solids to which the aforesaid 65 per centum is applicable.

(2) The maximum total milk solids content of frozen dairy foods manufactured, sold, or delivered by any person after January 31, 1943, shall be 22 per centum by weight.

(3) The milk solids-not-fat (sometimes referred to as serum solids) content of ice cream or ice cream mix manufactured, sold, or delivered by any person after January 31, 1943, shall not exceed 80 per centum by weight of the milk fat content of such ice cream and ice cream mix, respectively.

(4) Frozen dairy foods other than ice cream or mixes for ice cream are exempt from the provisions of (b) (3) hereof, but no processor shall, during any allocation period specified by the Director pursuant hereto, use in the production of such products more than 10 per centum (by weight) of the total milk solids available to him under the provisions in (b) (1) hereof or more than 100 per centum (by weight) of the amount of milk solids used by the respective processor for the production of such products in the corresponding portion of the base period. The milk solids used in frozen dairy foods or mix manufactured for, delivered to, and for the account of any agency specified in or pursuant to paragraph (c) hereof shall be excluded from the amount of milk solids to which the aforesaid 100 per centum is applicable.

(c) *Military exemption.* Frozen dairy foods or mix manufactured for delivered to, and for the account of the Army or Navy, including the U. S. Army Post Exchanges, U. S. Navy Ship's Service Departments, and U. S. Marine Corps Post Exchanges, shall be exempt from the provisions of paragraphs numbered (b) (1) and (b) (4) hereof: *Provided, That*

such Exchanges or Departments shall comply with the requirements, prescribed by the Director pursuant hereto, including, but not being limited to the submission of reports with respect to the purchases of frozen dairy foods or mix in each allocation period and with respect to the estimates of prospective purchases in designated allocation periods.

(d) *Equitable distribution.* Each processor shall make equitable distribution, among those persons supplied by such processor during the base period, of the frozen dairy foods and mix manufactured by such processor.

(e) *Option with respect to multiple plant operations.* Upon approval by the Director of a written request from a processor having multiple plant operations, such plants shall be considered separately in the application of the provisions hereof.

(f) *Records and reports.* Each person to whom this order applies shall maintain such records for such periods of time, and shall execute and file such reports and submit such information as the Director may from time to time request or direct, and within such times as he may prescribe.

(g) *Audits and inspections.* Each person to whom this order applies shall permit the Director or any person designated by him to inspect (1) the stocks of frozen dairy foods and mix, (2) the premises used for the manufacture of such products, and (3) the books, records, and accounts of the respective person subject to the provisions of this order.

(h) *Territorial scope.* Any processor doing business in one or more of the forty-eight States or the District of Columbia is subject to the provisions hereof, but the provisions hereof shall not apply to any processor doing business exclusively in any Territory or Possession of the United States.

(i) *Petition for relief from hardship.* Any person affected by this order who considers that compliance herewith would work an exceptional and unreasonable hardship on him may apply in writing for relief to the Director, setting forth, in said petition, all pertinent facts and the reasons for such petition being approved. The Director may thereupon take such action as he deems appropriate.

(j) *Communications to Department of Agriculture.* All reports required to be filed hereunder and all communications concerning this order shall, unless otherwise directed, be addressed to: Director of Food Distribution, United States Department of Agriculture, Washington, D. C., Ref: FD-8.

(k) *Violations.* Any person who wilfully violates any provision of this order, or who, in connection with this order,

wilfully conceals a material fact or furnishes false information to any department or agency of the United States is guilty of a crime, and upon conviction may be punished by fine or imprisonment. In addition, any such person may be prohibited from making or obtaining further deliveries of or from processing or using material under priority control, and may be deprived of priority assistance.

(l) *Delegation of authority.* The Director is hereby designated to administer the provisions hereof.

(m) *Effective date.* This order shall be effective as of 12:01 a. m., E. W. T., February 1, 1943.

(E.O. 9280, 7 F.R. 10179)

Issued this 19th day of January 1943.

[SEAL]

CLAUDE R. WICKARD,
Secretary of Agriculture.

UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD DISTRIBUTION ADMINISTRATION
Washington, D. C.

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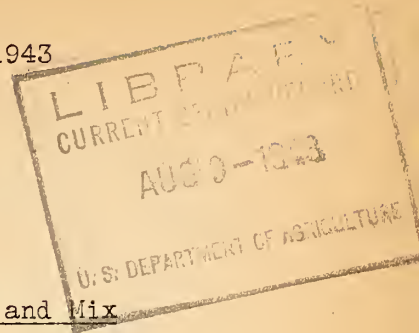
February 1943

Food Distribution Order No. 8

Questions and Answers

FROZEN DAIRY FOODS AND MIX

To All Processors of Frozen Dairy Foods and Mix



In 1942 the production of ice cream in the United States was approximately 435 million gallons. On this basis, production in 1942 was 14.5 percent above the 1941 production of 380 million gallons, and 43 percent above the production of 304 million gallons in 1941.

The average butterfat content in ice cream in recent years is estimated to have been 12.58 percent and the average milk solids-not-fat 10.3 percent. Thus, it appears that about 266 million pounds of butterfat and 218 million pounds of milk solids-not-fat were used in ice cream in 1942. Ice cream, together with sherbets, milk ices, and several minor products that may be classed as frozen dairy foods, utilized in 1942 a total of 271 million pounds of butterfat and 231 million pounds of milk solids-not-fat. Although these amounts appear large when considered in absolute terms, they represent, respectively, for 1942, an equivalent of about 19 percent of the total butterfat used in factory butter production and 34 percent of the dry skim milk production.

Under the 65 percent quota established in Food Distribution Order No. 8, it is estimated that during 1943 a saving of approximately 79 million pounds of milk fat and 65 million pounds of milk solids-not-fat will result. In terms of other dairy products, this saving would amount to about 98 million pounds of butter and 68 million pounds of dry skim milk. Here again, the amounts seem large but when considered in relation to the production of other dairy products, they are not as significant as at first they might appear. Nevertheless, they represent a real contribution on the part of the ice cream industry to the war effort.

In the present acute shortage of milk fat and milk solids-not-fat, both of which are needed for military and essential civilian uses, it is believed that the ice cream industry will cheerfully make the sacrifice which has been requested of them. With industry and Government working together, it is believed that the primary objective of Food Distribution Order No. 8 can be achieved without serious hardship or dislocations. Certainly the industry is to be complimented on the excellent manner in which it has received the provisions of Food Distribution Order No. 8 and the splendid attitude of cooperation which has been manifested during the short time it has been in effect.

Enclosed is a series of questions and answers which are intended to be helpful to the industry in clearing up some points in regard to the Order. May we count on you for your continued support?

T. G. Stitts, Chief
Dairy and Poultry Branch

February 1943

FROZEN DAIRY FOODS AND MIX

Food Distribution Order No. 8

Questions and Answers

This statement prepared for general distribution is intended to supply the answers to many of the questions raised by the public generally. For additional information write to the Administrator of Food Distribution Order No. 8, Food Distribution Administration, Washington, D. C., or to one of the regional offices located at Atlanta, Georgia; Chicago, Illinois; Dallas, Texas; Denver, Colorado; Des Moines, Iowa; New York, New York; and San Francisco, California.

1. Q - What is the primary objective of the Order?

A - To conserve milk solids-not-fat and milk fat used in ice cream.

2. Q - Why is this necessary?

A - Because of the shortage of these products in meeting the needs for dairy products for military and Lend-Lease purposes as well as for civilian consumption.

3. Q - Which of the two ingredients of ice cream indicated above is it considered more important to conserve?

A - Milk solids-not-fat.

4. Q - Why is this true?

A - Because they represent the principal available source of riboflavin and calcium which are very important in the human diet.

5. Q - Is Food Distribution Order No. 8 the only program affecting the dairy industry?

A - No, it is only one of several programs proposed or in operation to meet the present shortage of dairy products.

6. Q - What period of time is covered by the allocation period provided for in the Order?

A - The allocation period is on the basis of each calendar month, the first allocation period being the month of February.

7. Q - In establishing the portion of the base period applicable to the allocation period, is the corresponding month in the base period used?

A - Yes.

8. Q - Under the provisions of the Order, can an ice cream manufacturer stop serving a dealer?

A - Yes, providing the name of the account, the gallonage for the base period, and the reasons for discontinuing the account are furnished in writing to the Administrator, at least 10 days before service is discontinued. The request for discontinued service, however, may be disallowed by the Administrator in the event that it was not in accord with Section (d) of the Order relating to equitable distribution.

9. Q - Will the processor terminating the account lose the quota of that account?

A - Not unless another processor assumes the account, at which time, upon written petition under Paragraph (i) of the Order, the quota may be transferred upon approval of the Administrator.

10. Q - A manufacturer of ice cream and ice cream mix establishes quotas for ice cream and ice cream mix customers in accordance with Food Distribution Order No. 8. At the end of the allocation period he discovers that he has not sold his full quota of mix. Can he freeze into ice cream the mix that was intended for his mix accounts?

A - No.

11. Q - If an ice cream plant is purchased by another processor, is the quota of milk-solids automatically transferred to the purchaser?

A - Transfers of quotas can be made only upon approval of written petition to the Administrator.

12. Q - Can inventories of frozen dairy foods and mix be carried over from one allocation period to another?

A - Yes.

13. Q - To which quota of the 2 months in question would the solids in such inventories apply?

A - The first of the 2 months in question.

14. Q - May a processor manufacture part of his next month's quota in the preceding month?

A - No.

15. Q - Is a product containing 6 percent milk fat and 14 percent milk solids-not-fat considered as ice cream or as a frozen dairy food other than ice cream?

A - It is not ice cream but a frozen dairy food other than ice cream. Ice cream as defined in the order means any frozen dairy food containing 8 percent or more (by weight) of total milk fat included in 14 percent or more (by weight) of total milk solids.

16. Q - Section 1401.31 (b) (4) provides that no person shall use in the production of such products more than 10 percent (by weight) of the total milk solids available to him or more than 100 percent (by weight) of the amount of milk solids used by the respective processor for the production of such products in the corresponding portion of the base period. Does this allow the processor to select if he wishes whichever of these two alternatives was the greater?

A - Yes.

17. Q - Can a person purchasing a product containing 12 percent fat and 10 percent solids-not-fat by weight have his supplier furnish him with a product consisting of 10 percent fat and 8 percent solids-not-fat by weight and give him increased gallonage equivalent to 65 percent of his total milk solids during his base period?

A - Yes. It is the total milk solids that are restricted to 65 percent of the total milk solids used during the base period.

18. Q - Does the term milk solids-not-fat include the solids of buttermilk or whey?

A - Yes.

19. Q - Can an ice cream manufacturer discontinue the manufacture of ice cream or frozen dairy foods other than ice cream in certain forms even if some of his dealers may be handling these items exclusively?

A - Provided that he offers his customers an equivalent amount of total milk solids in the form of some other frozen dairy food.

20. Q - What military services are covered by the military exemption as defined in the Order?

A - Only those sales that are made directly to the Army or Navy, including the United States Post Exchanges, the United States Navy Ship's Service Departments, and the United States Marine Post Exchanges, are exempt from the 65 percent provision of this Order.

21. Q - Does military exemption include U.S.O. Service Clubs, civilian hospitals, defense plants, or restaurants feeding soldiers?

A - No. Only those sales that are made through the authorized purchasing agents of the Army and Navy, including Post Exchanges and Ship's Service, are exempt.

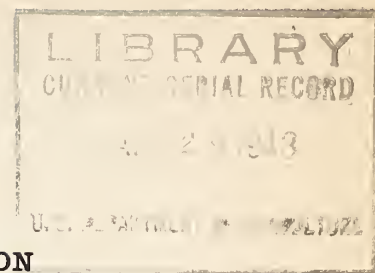
22. Q - Are sales to personnel of naval and air training schools exempt under this military provision?

A - They are not exempt unless the purchases are made through the regular purchasing agency of the United States Army or United States Navy.

23. Q - If compliance with this Order works an unreasonable or exceptional hardship upon a processor, what steps may be taken to obtain relief from any provision of this Order?
- A - He may make a written appeal stating all pertinent facts to Food Distribution Administration, Washington, D. C., Ref. FD-8.
24. Q - What provision is made for establishing quotas for processors who began the manufacture of frozen dairy foods after the beginning of the base period?
- A - Such processors can apply to the Administrator under the relief from hardship provision setting forth in full reasons why he should be given a quota.
25. Q - Who is the Administrator of this Order and what is his address?
- A - W. Bruce Silcox, Dairy and Poultry Branch, Food Distribution Administration, United States Department of Agriculture, Room 2759, Telephone Republic 4142, Extension 5347, Washington, D. C.
26. Q - To whom should communications in regard to Food Distribution Order No. 8 be addressed?
- A - The administrator of F. D. O. No. 8, Food Distribution Administration, United States Department of Agriculture, Washington, D.C.

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FEB. 1, 1943



FOOD DISTRIBUTION ADMINISTRATION
UNITED STATES DEPARTMENT OF AGRICULTURE

PART 1401—DAIRY PRODUCTS

[Food Distribution Order 8-1]

FROZEN DAIRY FOODS AND MIX

Pursuant to the authority vested in me by Food Distribution Order No. 8, dated January 19, 1943, issued pursuant to Executive Order No. 9280, dated December 5, 1942, and to effectuate the purposes of such order, *It is hereby ordered as follows:*

§ 1401.32 *Specification of allocation periods.* Each calendar month, beginning on February 1, 1943, is hereby specified as an allocation period to which quotas, percentages, reports, and other regulations are applicable, in accordance with the provisions in § 1401.31 (a) (8) and § 1401.31 (b) of said Food Distribution Order No. 8, dated January 19, 1943. (E.O. 9280, 7 F.R. 10179; F.D.O. No. 8, 8 F.R. 953)

Issued this 1st day of February 1943.

[SEAL] **ROY F. HENDRICKSON,**
Director of Food Distribution.

WAR FOOD ADMINISTRATION
OFFICE OF DISTRIBUTION
COMPLIANCE BRANCH

SYNOPSIS FOR USE IN MAKING ACCOUNTING INVESTIGATIONS -

APRIL 1, 1944

FOOD DISTRIBUTION ORDER 8 - FROZEN DAIRY FOODS AND MIX

The Order and Amendments

The auditor should study carefully the provisions of the following orders, regulations, and amendments:

	<u>Issued</u>	<u>Effective</u>
FDO 8	January 19, 1943	February 1, 1943
FDO 8 - Amendment 1	September 1, 1943	September 6, 1943
FDO 8-1	February 1, 1943	(February 1, 1943)
FDO 8-2	November 4, 1943	November 1, 1943
FDR 2	June 4, 1943	June 15, 1943
FDR 2 - Amendment 1	October 8, 1943	November 15, 1943
FDR 2 - Amendment 2	November 15, 1943	November 15, 1943
FDR 3	October 8, 1943	November 15, 1943
Reg. 3 - Amendment 1	November 15, 1943	November 15, 1943
Reg. 3-1	January 8, 1944	January 1, 1944

Authority for Making the Audit - (FDO 8, Sec. 1401.31 (g), of January 19, 1943)

"Each person to whom this order applies shall permit the Director or any person designated by him to inspect (1) the stocks of frozen dairy foods and mix, (2) the premises used for the manufacture of such products, and (3) the books, records, and accounts of the respective person subject to the provisions of this order."

Objectives of the Audit

To ascertain whether and to what extent the audit subject has complied with provisions of the Order requiring the subject:

1. To restrict his use of total milk solids in the manufacture of frozen dairy foods and mix in the following respects:
 - A. Total milk solids used in any allocation period (each calendar month, FDO 8-1, February 1, 1943) specified by the Director not to exceed 65 percentum of total milk solids used by him during the corresponding portion of the base period (December 1, 1941, through November 30, 1942).
 - B. Total milk solids content of frozen dairy foods manufactured, sold, or delivered after January 31, 1943, not to exceed 22 percentum by weight.
 - C. Milk solids-not-fat (or serum solids) content of ice cream or ice cream mix not to exceed 80 percentum by weight of the milk fat content.

D. Frozen dairy foods other than ice cream or ice cream mixes (sherberts, frozen custards, etc.) to be limited to the larger of either:

- (1) Ten percentum by weight of the total milk solids available to the subject under "A" above. (Note that FDO 8-2, effective November 1, 1943, increased from 10% to 20% for California only).
 - (2) 100 percentum by weight of the total milk solids subject used in making such products in the corresponding portion of the base period, provided such amount did not exceed the total amount (65% of base period) available to him under "A" above.
2. To make equitable distribution, among those persons supplied by such processor during the base period, of the frozen dairy foods and mix produced by such processor.

(Notes)

"In all instances to date (April 16, 1943), this section of the Order has been interpreted to the effect that if a processor was serving an account during the latter part of the base period (e. g., September, October, and November 1942) it is his obligation to continue to serve that account at the present time." (Except an account that operated seasonally only, when obligation applies only to corresponding seasonal period). "Where a processor is serving several retail stores and one is closed, it is considered to be equitable distribution for that processor to distribute the amount of frozen dairy foods previously taken by that store, among the other retail stores served until the quota formerly distributed to the retail store which closed is requested for use again at that location." (Administrative Interpretation.)

A recent opinion from the Solicitor's Office indicates that provisions for "equitable distribution" are probably not enforceable at law. So this provision need not be given major attention in an audit.

3. To maintain proper records supporting the reports required from "each person to whom this order applies."

(Note that Army and Marine Corps post exchanges and Navy ship's service departments "shall comply with requirements, presented by the Director pursuant hereto, including, but not being limited to, the submission of reports with respect to the purchases of frozen dairy foods or mix in each allocation period and with respect to the estimates of prospective purchases in designated allocation periods." (FDO 8, Amendment 1, Sec. 1401.31 (a)(6).)

Scope of the Audit

The audit of a processor of frozen dairy foods or mix should be extended to cover the production from the receipt and utilization of raw material to the actual production and distribution, especially where distribution to exempt military agencies is alleged.* Sound accounting principles should be applied in proving that production was maintained within the several quota limitations and component restrictions of the order, that sales to exempt military agencies were valid, and other accounting proof. This would include the proper verification or reconciliation of such transactions with the general books.

Certification of Sales to Military Agencies and other Designated Exempt Agencies

Alleged quota exempt sales should be verified to governmental and other designated agencies. Approved quota-exempt sales may be made as follows: (See FDO 8, Sec. 1401.31, (b) (1,4), (c), and FDO 8, Amendment 1, Sec. 1401.31, (c).

1. To the Army, Navy, Marine Corps, and Coast Guard of the United States, including Army and Marine Corps Post Exchanges and Navy Ship's Service Departments, also the Veterans Administration.

(Note) - This military exemption does not include U. S. O. Service Clubs, civilian hospitals, defense plants, or restaurants feeding soldiers (Questions and Answers on FDO 8, by Order Administrator, February 1943).

2. To the War Shipping Administration and to ships operating under contract with the W. S. A. Vendor should submit certificates covering such sales, as provided for in FDR 2, Sec. 1598.1 (a,3), (d),(e),(f); FDR 3, Sec. 1598.7, (f), (g), (h), (i); FDO 8, Sec. 1401.31, (a,6).
3. To a contract school feeding personnel of the Armed Services under proper contract. Vendor is to have certificates available to cover such sales as provided for under the following regulations and amendments:

*Note - Appendix Exhibit A presents a method for calculating the use of permissible quantities of total milk solids to manufacture larger quantities of frozen dairy products within the quota restrictions. This type of calculation should be fully understood by the auditor.)

FDO 8, Amendment 1, Sec. 1401, (a, 6).

FDR 2, Sec. 1598.1 (a, 1), (b), (c), (f).

FDR 2 - Amendment 1, Sec. 1598.1, (b), (c)

Reg. 2 - Amendment 2

Reg. 2-1

Reg. 2-1, Amendment 1

Quota Exemptions and Transfers

1. The milk solids used in frozen dairy foods or mix are not to be included in the manufacturer's quota of 65 percentum of base period use or his other frozen foods quota (10% of total milk solids available to him) when sold to designated military and other exempt agencies. (Sec. 1401.31, (b, 1). (See section on Certification of Sales to Designated Exempt Agencies.)
2. Mix sold by one processor to another processor who manufactures and sells to exempt military agencies is exempt from quota. But ice cream, etc., is not quota-exempt when sold by a processor to a dealer who in turn sells to a designated military agency. To be quota-exempt, dairy foods must be sold directly by the processor to the exempt military agency. (Administrator of FDO 8, April 16, 1943.)
3. Transfers of quotas between processors can be made only upon approval of written petition to the Order Administrator (Questions and Answers on FDO 8, February 1943. "There should be no traffic in quotas." (Administrator of FDO 8, Interpretations of April 16, 1943.) Where a business is purchased in its entirety, the quota of former owner may be transferred to new owner of the business on the certification of former owner that he will no longer use the quota he formerly had, if the new owner certifies that substantially the same customers or accounts will continue to be served.
4. Transfers of a processor's quota between months: Inventories of frozen dairy foods and mix can be carried over from one allocation period (month) to another and will then be charged to the quota of the first of the months in question. However, a processor may not manufacture part of his next month's quota in the preceding month. (Questions and Answers on FDO 8, February 1943.)
5. "In instances where a supplier has been serving an account and there is good reason for transferring the quota for that account (such as delivery difficulties under present conditions), it has been held that, on agreement among the three parties involved, the quota in question may be transferred to the new supplier, provided the former supplier reduces his quota by a corresponding amount and furnishes the administrator with a statement to that effect." (Order Administrator, April 16, 1943.)

6. "The transfer of any portion of a mix quota to a frozen products quota is not permissible, except on petition from a customer previously purchasing mix who may desire to purchase the frozen product."
7. "In instances where the sales of quota-exempt products exceed the production of same during a given month the processor may withdraw from his inventory an amount sufficient to meet the requirements for military uses and replace the amount so withdrawn during the next month." (Order Administrator, April 16, 1943).
8. The Regional Directors were authorized (by letter of Roy F. Hendrickson, Director, November 27, 1943) to authorize transfer of quotas from one processor to another in those cases which do not involve an increase in the amount of milk solids used. Conditions for transfer are detailed in said letter. (See Files).

APPENDIX EXHIBIT A
CALCULATIONS IN USE OF MILK SOLIDS

It is likely that the operations of the several subjects will generally be related to milk and milk products. For use in determining the accuracy of representations, with respect to other products and the performance of tests in connection therewith, you should use the milk product conversion tables previously furnished your office.

A general working knowledge of the ice cream industry is essential to success in this class of assignment and each accountant given an assignment under this order should thoroughly familiarize himself with the following information:

Upon the removal of the milk fat (sometimes called butterfat) and the water from whole milk, the remaining solids constitute the solids-not-fat (S.N.F.). In ice cream, it is necessary to distinguish between the fatty solids and the non-fatty solids specified as milk solids-not-fat. The term "serum solids" is commonly used in lieu of the longer term "milk solids-not-fat."

It should be noted that ices are not affected by the Orders as they are manufactured with flavoring and water only and contain no milk solids.

The following are fair averages of serum solids derived from the following products:

<u>Product</u>	<u>Unit Factor</u>	<u>Pounds Weight Per Unit</u>	<u>Serum Solids Derivative</u>
Cream(40% B.F.)	1 gallon	8.37(50 degrees F.)	.47 pounds
Cream(30% B.F.)	1 "	8.43(50 " F.)	.55 "
Cream(20% B.F.)	1 "	8.51(50 " F.)	.64 "
Condensed Skim Milk:			
--Sweetened	1 gallon	11.16(68 degrees F.)	3.13 "
--Unsweetened:			
20% S.S.	1 gallon	9.0 (60 degrees F.)	1.80 "
35% S.S.	1 "	9.5 (60 " F.)	3.32 "
Powdered Skim Milk	1 pound	1 pound	.95 "
Skim Milk	1 gallon	8.65(50 degrees F.)	.80 "
Whole Milk	1 "	8.6(4% B.F. at 50°F.)	.73 "
Condensed Whole Milk:			
--Sweetened	1 gallon	10.9 (60 degrees F.)	2.12 "
--Unsweetened	1 "	9.1 (60 " F.)	2.27 "
Powdered Milk	100 pounds	100 pounds	70 "

As the Order regulates the use of total milk solids it is first necessary to ascertain from which commodities the milk fat and serum solids (or both) are derived. It should be noted that the weight of milk fat is less than a comparative volume of serum solids.

Under the restrictions of CO DA-1, spray process dried skim may not be used in the manufacture of ice cream or mix. The CO DA-1 did not affect roller process dried skim milk, but successor FDO-54-1 included both types.

The Orders restrict the use of total milk solids content in excess of 22%. Since one gallon of 22% total milk solids content ice cream mix weighs 9.1 pounds, one gallon of ice cream will weigh 4.55 pounds, assuming that the overrun is 100%. Notwithstanding the total milk solids content, however, mixes are generally computed at 9.1 per gallon and ice cream at 4.55 per gallon even though milk fats weigh less than serum solids.

The following formulae are illustrative of conditions which might be met:

<u>Total Milk Solids</u>	<u>Butter Fat</u>	<u>Serum Solids</u>
22%	15.7%	6.3%
22%	14.0%	8.0%
21.6%	12.0%	9.6%
18%	10.0%	8.0%
14.4%	8.0%	6.4%

Since the weight and percent figures are not mathematically exact, allowance should be made for reasonable variations in the examination of production and ingredient solids figures.

A mere increase in production in the regulatory period over the production of the base period is not of itself a violation of the Orders, and an example of the method whereby the processor may increase his production and yet keep within the 65% limitation is given below.

A, who is a processor, manufactured in March 1942, 100 gallons of mix containing 25% total milk solids on which he made an overrun of 80%, resulting in a total production of 180 gallons of ice cream. In his 25%, he used 18% milk fat and 7% serum solids. In the current month, he decided upon a departure from his usual "quality" ice cream and strived for quantity, and therefore used a mix containing 18% T.M.S. on which he made an overrun of 100% of the mix used in making the ice cream. When he had computed the amount of mix he was permitted to use

(65%) he reserved 10% (of the 65%) for use in the making of sherbet. By this method, he produced, in the current month, 162.6 gallons of ice cream, and also 84.5 gallons of sherbet, totaling 247.1 gallons of frozen dairy foods as compared to the 180 gallons of ice cream produced by him in the corresponding month of the base period.

This is how A computed his problem:

In base month, he made 100 gal. mix weighing 9.1 lbs. per gallon

$$100 \times 9.1 = 910. \text{ lbs. mix used}$$

To learn the total weight of the T.M.S. he used in the 910 lbs. of mix, multiply

$$910 \times .25(\%) = 227.5 \text{ lbs. of T.M.S. used.}$$

To simplify matters a bit, we drop the .5 and use 227. as the principal upon which the 65% is computed.

$$.65(\%) \times 227 = 147.55 \text{ lbs. which we will call 148.}$$

At this point, A has learned that he is limited to the use of 148 lbs. of T.M.S. in his production during the current month. Of this 148 lbs. he will use 90% in mix for ice cream and 10% for sherbet mix.

Under the Order, A will use

$$\begin{array}{r} 133.2 \text{ lbs. for ice cream and} \\ 14.8 \text{ lbs. for sherbet} \\ \hline 148.0 \text{ lbs. total} \end{array}$$

The Manufacture of Ice Cream by A

As A will use ice cream mix containing 18% T.M.S. content, he determines how many pounds of T.M.S. he will be able to use, per gallon of ice cream mix, by multiplying the weight of a gallon of ice cream mix (9.1) by the % of T.M.S. content (18%)

$$\begin{array}{r} 9.1 \text{ lbs.} \times .18 \text{ equals} \\ 1.638 \text{ lbs. - weight of} \\ \text{T.M.S. in a gallon} \\ \text{of ice cream mix} \\ \text{of 18\% T.M.S.} \end{array}$$

He has 133.2 lbs. of T.M.S. available.

$$133.2 \text{ divided by } 1.638 \text{ produces } 81.3 \text{ gallons of ice cream 18\% mix.}$$

He takes the 81.3 gallons of ice cream mix and decides he'll make an overrun of 100% in processing into ice cream and he can produce

$$81.3 \text{ gallons} \times 200\% \text{ or } 162.6 \text{ gallons of ice cream.}$$

The Manufacture of Sherbet by A

As A will use sherbet mix containing $2\frac{1}{2}\%$ T.M.S. content, he determines how many pounds of T.M.S. he will be able to use, per gallon of sherbet mix, by multiplying the weight of a gallon of sherbet mix (9.1) by the % of T.M.S. content ($2\frac{1}{2}\%$).

$$9.1 \times .02\frac{1}{2} = .2275 \text{ lbs. - weight of T.M.S. in a gallon of sherbet mix of } 2\frac{1}{2}\% \text{ T.M.S.}$$

He has 14.8 pounds of T.M.S. available.

14.8 divided by .2275 produces 65.05 gallons of $2\frac{1}{2}\%$ sherbet mix.

He takes the 65. gallons of sherbet mix on which he will make a 30% overrun in processing into sherbet and produces

65. (gallons) \times 1.30 or 84.5 gallons of Sherbet

RESULT: 162.6 Gallons of Ice Cream
84.5 Gallons of Sherbet
247.1 Gallons total production as compared to 180. gallons produced by him in the base period.

WAR FOOD ADMINISTRATION

[FDO 8, Amdt. 1]

PART 1401—DAIRY PRODUCTS

FROZEN DAIRY FOODS AND MIX

Food Distribution Order No. 8 (8 F.R. 953), issued by the Secretary of Agriculture on January 19, 1943, is hereby amended to read as follows:

§ 1401.31 *Frozen dairy foods and mix, limitations with respect to the production thereof—*(a) *Definitions.* When used in this order, unless otherwise distinctly expressed or manifestly incompatible with the intent hereof:

(1) The term "processor" means any person engaged in the manufacture of frozen dairy foods or mix.

(2) The term "frozen dairy foods" means any frozen or partially frozen food products (including ice cream, French ice cream, ice milks, milk ices, frozen custards, sherbets, and other similar preparations) containing milk solids and sugar, together with stabilizers, extracts, fruits, nuts, coloring, or flavoring materials.

(3) The term "mix" means any liquid or dried unfrozen preparation (including ice cream mix, ice cream powders, milk ice mix, ice milk mix, milk shake mix, and other similar preparations), containing milk solids and sugar, that is used directly in the freezing of a frozen dairy food.

(4) The term "ice cream" means any frozen dairy food containing 8 per centum or more (by weight) of milk fat included in 14 per centum or more (by weight) of total milk solids.

(5) The term "person" means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not.

(6) The term "governmental agency" means (i) the Armed Services of the United States (for the purposes of this order, including, but not restricted to, the United States Army post exchanges; United States Navy ships' service departments; and United States Marine Corps post exchanges); (ii) the War Shipping Administration; (iii) the Veterans Administration; and (iv) any other instrumentality or agency designated by the War Food Administrator. The term "governmental agency" also includes any contract school or ship operator, as defined in Food Distribution Regulation (8 F.R. 7523), purchasing frozen dairy foods or mix in accordance with said Food Distribution Regulation 2.

(7) The term "Armed Services of the United States" means the Army, the

Navy, the Marine Corps, or the Coast Guard of the United States.

(8) The term "Director" means the Director of Food Distribution, War Food Administration.

(9) The term "base period" means the period from December 1, 1941, to November 30, 1942, both dates inclusive.

(10) The term "allocation period" means any period specified by the Director, to which quotas, reports, and other regulations herein provided are applicable.

(b) *Restrictions on production of frozen dairy foods and mix.* (1) No processor, during any allocation period specified by the Director pursuant hereto, may utilize in the production of frozen dairy foods or mix more than 65 per centum of the total milk solids used by the respective processor in the production of such products, respectively, during the corresponding portion of the base period, exclusive of all such products processed for, or sold to, a governmental agency by such processor during such base period. The milk solids used in frozen dairy foods or mix manufactured for, or delivered to, or for the account of, a governmental agency, shall be excluded from the amount of milk solids to which the aforesaid 65 per centum is applicable.

(2) The maximum total milk solids content of frozen dairy foods manufactured, sold, or delivered by any person, after the effective time hereof, shall be 22 per centum (by weight).

(3) The milk solids-not-fat (sometimes referred to as serum solids) content of ice cream or ice cream mix manufactured, sold, or delivered by any person, after the effective time hereof, shall not exceed 80 per centum (by weight) of the milk fat content of such ice cream and ice cream mix, respectively.

(4) Frozen dairy foods other than ice cream, and mixes for frozen dairy foods other than ice cream, are exempt from the provisions of (b) (3) hereof, but no processor, during any allocation period specified by the Director pursuant hereto, shall use in the production of such products more than the larger of the two following quantities: (i) 10 per centum (by weight) of the total milk solids available to the respective processor under the provisions of (b) (1) hereof, or (ii) the amount (by weight) of milk solids used by the respective processor for the production of such products in the corresponding portion of the base period with-in and subject to the limitations imposed by (b) (1) hereof.

(5) The Director may, at any time, increase or decrease the percentage, designated in (b) (4) (i) hereof, of milk solids available to processors which may be used for frozen dairy foods other than ice cream or mixes. Such change of percentage may be made applicable by the Director to any area or areas where, in his opinion, the demand and production conditions warrant such a change.

(c) *Governmental agency exemption.* Frozen dairy foods or mix manufactured for, or delivered to, or for the account of, a governmental agency shall be exempt from the provisions of paragraphs (b) (1) and (b) (4) hereof.

(d) *Equitable distribution.* Each processor shall make equitable distribution among those persons supplied by such processor during the base period of the frozen dairy foods and mix manufactured by such processor.

(e) *Option with respect to multiple plant operations.* Upon approval by the Director of a written request from a processor having multiple plant operations, such plants shall be considered separately in the application of the provisions hereof.

(f) *Records and reports.* The Director shall be entitled to obtain such information from, and require such reports and the keeping of such records by, any person, as may be necessary or appropriate, in his discretion, to the enforcement or administration of the provisions of this order, subject to the approval of the Bureau of the Budget pursuant to the Federal Reports Act of 1942.

(g) *Audits and inspections.* The Director shall be entitled to make such audit or inspection of the books, records, and other writings, premises or stocks of frozen dairy foods and mix, of any person, and to make such investigations, as may be necessary or appropriate, in his discretion, to the enforcement or administration of the provisions of this order.

(h) *Territorial scope.* Any processor doing business in one or more of the forty-eight States or the District of Columbia is subject to the provisions hereof, but the provisions hereof shall not apply to any processor doing business exclusively in any Territory or Possession of the United States.

(i) *Petition for relief from hardship.* Any person affected by this order, who considers that compliance herewith would work an exceptional and unreasonable hardship on him, may file a petition for relief with the Regional Director, Food Distribution Administration, War Food Administration, serving the area

(8 F.R. 9315) in which such person resides or does business. Petitions for such relief shall be in writing, and shall set forth all pertinent facts and the nature of the relief sought. If such person is dissatisfied with the action taken on the petition by the Regional Director, he may, by requesting the Regional Director therefor, secure a review of such action by the Director. The Director may, after such review, take such action as he deems appropriate, and such action shall be final.

(j) *Communications.* All reports required to be filed hereunder shall be addressed in conformity with the instructions specified in the respective form required to be submitted. All other communications concerning this order shall, unless instructions to the contrary are issued by the Director, be addressed to the Regional Director, Food Distribution Administration, War Food Administration, serving the area (8 F.R. 9315) in

which the person affected by this order resides or does business.

(k) *Violations.* The War Food Administrator may, by suspension order, prohibit any person who violates any provision of this order from receiving, making any deliveries of, or using frozen dairy foods or mix, or any other material subject to priority or allocation control by the War Food Administrator, and may recommend that any such person be prohibited from receiving, making any deliveries of, or using materials subject to the priority or allocation control of other governmental agencies. In addition, any person who wilfully violates any provision of this order is guilty of a crime and may be prosecuted under any and all applicable laws. Further, civil action may be instituted to enforce any liability or duty created by, or to enjoin any violation of, any provision of this order.

(l) *Delegation of authority.* The administration of this order and the pow-

ers vested in the War Food Administrator, insofar as such powers relate to the administration of this order, are hereby delegated to the Director. The Director is authorized to redelegate to any employee of the United States Department of Agriculture any or all of the authority vested in him by this order.

(m) *Effective date.* This order shall become effective 12:01 a. m., e. w. t., September 6, 1943. With respect to any violation of Food Distribution Order No. 8, prior to the effective time hereof, said food distribution order shall be deemed to continue in full force and effect for the purpose of sustaining any proper suit, action, or other proceeding with respect to any such violation.

(E.O. 9280, 7 F.R. 10179; E.O. 9322, 8 F.R. 3807; E.O. 9334, 8 F.R. 5423)

Issued this 1st day of September 1943.

MARVIN JONES,
War Food Administrator.

Press Release, Immediate:
Thursday, September 2, 1943.

Because of changed conditions, the War Food Administration has amended Food Distribution Order 8, covering ice cream and other frozen dairy foods.

Processors are now permitted to use milk solids in the production of frozen dairy foods and mix for delivery to the Veterans Administration, "contract" schools, and eligible ship operators, as defined in Food Regulation 2, without charging the quantity thus used against their civilian quotas. "Contract" schools are those holding written contracts to feed military personnel.

In order to confirm the sales reported by them to be quota exempt, processors should obtain and file certificates which they receive from "contract" schools and eligible ship operators—as specified in Food Regulation 2. Also, the total milk solids used each month by processors in manufacturing such frozen dairy foods or mix for delivery to these agencies, during the base period should be excluded from the amount of milk solids used in computing civilian quotas for that month.

The amendment also clarifies the provision of the order relating to the production of frozen dairy foods other than

ice cream. Processors may use in the production of such products (1) up to 10% (by weight) of the total milk solids used by them in the production of these products during the corresponding portion of the base period—whichever is greater. In no event, however, shall a processor exceed 65 percent of the total milk solids used in the production of frozen dairy foods or mix during the corresponding month of the base period.

Other changes in the order deal with delegation of authority of the Director of the Food Distribution Administration, and minor adjustments which will facilitate the administration of the order.